

**Glaziers, Architectural Metal and Glassworkers Local Union No. 513, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO and West County Glass, Inc.**  
Case 14-CC-2325

December 26, 1996

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On September 12, 1996, Administrative Law Judge J. Pargen Robertson issued the attached decision. Counsel for the General Counsel filed a limited exception.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exception and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.<sup>1</sup>

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Glaziers, Architectural Metal and Glassworkers Local Union No. 513, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO, St. Louis, Missouri, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(a).

"(a) Within 14 days after service by the Region, post at its facility in St. Louis, Missouri, copies of the attached notice marked 'Appendix.'<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material."

<sup>1</sup> Counsel for the General Counsel filed a limited exception to the judge's proposed order which incorrectly referred to the Respondent's facility as being located in St. Peters, Missouri, rather than in St. Louis, Missouri. We find merit in this exception and shall modify the recommended Order accordingly.

*Christal J. Gulick, Esq.* and *Dorothy D. Wilson, Esq.*, for the General Counsel.

*Jeffrey E. Hartnett, Esq.*, of St. Louis, Missouri, for the Respondent.

*Donald L. Kohl, Esq.*, of St. Charles, Missouri, for the Charging Party.

## DECISION

J. PARGEN ROBERTSON, Administrative Law Judge. This matter was heard in St. Louis, Missouri, on June 4, 1996. The charge was filed on March 12, 1996. A complaint issued on March 19, 1996.

Respondent, the Charging Party, and the General Counsel were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Respondent and the General Counsel filed briefs. Upon consideration of the entire record and briefs, I make the following findings.

### I. JURISDICTION

The General Counsel alleged that the Charging Party, West County Glass, Inc., purchased and received in excess of \$50,000 in goods during the 12-month period ending February 29, 1996, from Vistawall Architectural Products and that Vistawall had received those goods directly from points outside Missouri.

Donna Busch-Criscione testified that she is a sales representative for Vistawall Architectural Products. Vistawall is located in Terrell, Texas. Busch-Criscione testified from what she identified as essentially an activity statement, that her records show that between March 1, 1995, and February 26, 1996, West County Glass purchased goods valued at \$96,423 from Vistawall. All of those goods were shipped directly from Terrell, Texas. Some of the goods were shipped to Vistawall's Maryland Heights, Missouri distribution facility where those goods were picked up by West County Glass. The remainder of the goods were shipped directly to West County Glass at its Missouri facilities. Joan Bindbeutel, West County vice president, testified that approximately 3 percent of the goods West County received from Vistawall between March 1, 1995, and February 28, 1996, were shipped directly to West County in Missouri from Vistawall in Terrell, Texas. The remainder of the goods from Vistawall during that period were shipped from Terrell, Texas, to Vistawall's facility in Maryland Heights, Missouri, where the goods were picked up by West County Glass.

Respondent in its posthearing brief moved to dismiss the complaint on alleging that the actual invoices supplied to it in support of General Counsel's Exhibit 7, proved that during the March 1, 1995, to February 26, 1996 period, products that moved "directly from Texas to Missouri had a gross volume of only \$10,265.53," and that the invoices failed to prove any indirect inflow. Respondent correctly contended that the invoices show a relatively small value of goods received by West County Glass directly from Texas.

However, the invoices attached to Respondent's brief show \$89,945.21 in invoices for products received by West County Glass at Vistawall's Maryland Heights, Missouri facility. Those invoices reflect that the materials were shipped to West County Glass, Inc., CPU, Maryland Heights, Missouri. That evidence is in accord with the testimony of Donna

Busch-Criscione and Joan Bindbeutel showing that a substantial portion of the goods sold to West County Glass were shipped from Terrell, Texas, to Vistawall's Maryland Heights, Missouri distribution facility where those goods were picked up by West County Glass. In view of those figures and the undisputed testimony of Busch-Criscione and Joan Bindbeutel, I find that West County Glass received in excess of \$50,000 in goods in the 12-month period ending February 28, 1996, from Vistawall's distribution facility in Maryland Heights, Missouri. The products were all manufactured by Vistawall in Terrell, Texas, prior to their shipment to Missouri. All those goods were shipped by Vistawall to Maryland Heights from Terrell, Texas. *Siemens Mailing Service*, 122 NLRB 81 (1958); and *Better Electric Co.*, 129 NLRB 1012 (1960).

West County Glass president, James Bindbeutel, testified without dispute that West County employed five employees during material times. In view of the full record I deny Respondent's motion and I find that West County Glass, Inc. is an employer engaged in commerce as defined in the Act.

## II. LABOR ORGANIZATION

Respondent admitted that it has been a labor organization at material times within the meaning of Section 2(13) of the National Labor Relations Act (the Act).

## III. THE ALLEGED UNFAIR LABOR PRACTICES

At issue are allegations that Respondent engaged in violation of Section 8(b)(4)(i) and (ii)(B) of the Act by engaging in picketing on a jobsite with the knowledge and at a time when the Charging Party was not on the jobsite and by threatening the general contractor with continued picketing.

Respondent admitted that at material times it has been involved in a labor dispute with the Charging Party. Respondent was not involved in a labor dispute with the general contractor, Allied Builders Corporation (Allied).

Kirt Neusitz, president of Allied Builders Corporation, testified that Allied had a contract for a construction job at Brentwood Commons in Missouri. That contract included a penalty clause for failure to complete the job by May 1, 1996. Allied subcontracted with several other contractors including West County Glass, to perform some of the work at Brentwood Commons.

James Bindbeutel testified that he is president of Charging Party West County Glass. To his knowledge none of his five employees are represented by Respondent.

### A. February 28, 1996

On February 28, 1996, Kirt Neusitz received a letter from the Union advising it would picket the Brentwood Commons job on information that West County Glass would perform work on that job. The picketing would be informational.

After receiving the Union's letter, Neusitz phoned West County Glass and agreed that West County would limit its work on the job to weekends when the other trades were not working.

### B. March 9, 1996

James Bindbeutel testified that West County started work on the jobsite on March 9, 1996. Because Allied had received a letter from Respondent that the Union would picket

the job because West County Glass was doing the glazing, Bindbeutel agreed on a work schedule that limited West County's work to weekends and evenings. Following March 9, West County was not scheduled to return until March 16.

### C. March 12, 1996

The parties stipulated that on March 12 Respondent began picketing on the jobsite at about 9:30 a.m. As shown below, West County Glass was named on the picket sign.

The evidence is undisputed that West County Glass did not work on the job on March 12 or 13, 1996.

Greg R. Muenks is carpenter foreman for Allied Builders. Muenks testified that the Union picketed their Brentwood Commons jobsite on March 12, 1996. He talked with Union Business Agent Frank Scimo at the entrance gate where Scimo was picketing. Scimo asked who was doing their glasswork. Muenks replied that he was not certain but believed it was West County Glass but they had not been on the jobsite while he was there. Muenks told Scimo there were not any glassworkers on the job at that time and that Scimo could come by during the weekend if he wanted to see who was doing the glasswork because that was when it was being done. Scimo replied that it did not matter whether the glass was being worked because Allied was a PRIDE contractor.

Muenks phoned his office and informed Kirt Neusitz of the picketing. Muenks left the jobsite at 12:30 p.m. At that time the pickets were still up at the gate.

When Kirt Neusitz heard of the picketing on March 12, he phoned James Bindbeutel at West County and was told that West County had no one on the job. He went to the jobsite at approximately 10 a.m. Neusitz told Business Agent Frank Scimo that West County Glass was not on the job nor were their materials on the jobsite. Neusitz asked Scimo to leave and he offered to give Scimo a schedule of when West County would be working. Scimo told Neusitz that the Union could hold up the job by 2 or 3 days and there was nothing Neusitz could do about it. Scimo said that he would give them as much trouble as he could. Neusitz testified that the employees of several subcontractors left the job because of the picketing.

Respondent's business manager, Frank Scimo, admitted that the Union picketed the Russell Street entrance to a jobsite known as Brentwood Commons on March 12, 1996. Scimo admitted that he talked with James Bindbeutel of West County Glass, at the job during the picketing. Bindbeutel told Scimo that he was not working on the project and that he was going to the NLRB. James Bindbeutel testified that he asked Scimo to cooperate and remove the pickets but Scimo refused.

James Bindbeutel testified that on March 12 he learned that the Respondent was picketing the job. He went to the job with a camera and saw Frank Scimo picketing in front of the gate. The picket sign named West County and stated that it was informational picketing.

Scimo admitted that some of the workers from other crafts left the job during the picketing.

On March 12, West County advised Respondent by fax that it was not currently working on the Brentwood Commons job and that it would advise Respondent before returning to the job.

#### D. March 13, 1996

On Wednesday, March 13, the picketing started before 7 a.m. and it concluded by about 10:30 a.m.

None of the West County Glass, Inc. employees were on the job on March 13. Greg Muenks testified that the mechanical contractor and the brick contractor refused to cross the picket line on March 13.

#### E. March 15, 1996

On March 15, 1996, Joan Bindbeutel, West County's vice president faxed the Union that West County Glass would return to the jobsite at Brentwood Commons from approximately 4 a.m. to 8 p.m. on March 16, 1996.

#### IV. FINDINGS

##### Credibility

In view of their demeanor and the full record I credit the testimony of Greg Muenks, James Bindbeutel, Joan Bindbeutel, Barbara Busch-Criscione, and Kirt Neusitz. Their testimonies were essentially undisputed.

##### Conclusions

I find that Respondent engaged in picketing at the Brentwood Commons job in Brentwood, Missouri, on March 12 and 13, 1996. The picket signs named West County Glass Co.

The evidence shows that the Union through Business Manager Frank Scimo wrote general contractor, Allied Builders, on February 28, 1996, and threatened to picket Allied's Brentwood Commons job because some work would be performed by West County Glass. Subsequently, on March 12, 1996, while picketing the Brentwood Commons job, Respondent's business manager, Scimo, threatened Allied Builders that he could hold up the job 2 or 3 days and that he would give them as much trouble as he could.

On March 12, 1996, the Union knew that West County Glass was not working on the job. Nevertheless the Union continued to picket the Brentwood Commons job during the March 12 and 13, 1996 work days. While picketing Business Manager Scimo expressed appreciation to at least one employee who worked for someone on the job other than West County Glass, for leaving the job. Scimo told James Bindbeutel that other crafts had left the job because of his picketing. The above shows that Respondent engaged in threats and picketing to induce employees to engage in a strike or refusal to perform services in order to force Allied Builders to cease doing business with West County Glass. *Service Employees Local 87 (Trinity Maintenance)*, 312 NLRB 715, 742-743 (1993).

Respondent's action is not excused by advertising that it was picketing on the basis of area standards. *Service Employees Local 254 (Janitronic, Inc.)*, 271 NLRB 750, 751-752 (1984).

The record shows that Respondent ignored the standards for minimizing impact of its picketing on neutral employers by engaging in picketing at times when it knew West County Glass was not on the job. *Sailors Union (Moore Dry Dock)*, 92 NLRB 547, 549 (1950); *Service Employees Local 87 (Trinity Maintenance)*, supra, 312 NLRB at 743-744.

In view of the full record I find that Respondent threatened an employer, Allied Builders, with whom it did not have a labor dispute that it would picket Allied's job; and the Union did picket Allied's job with knowledge that no one was working at the time of the picketing with whom the Union had a labor dispute. The evidence proved that employees left the job because of the picketing and that the Union expressed appreciation to those employees for leaving. I find that an object of the Union's threats and picketing was to force Allied Builders to cease doing business with West Coast Glass, Co. and Respondent's conduct constitutes violations of Section 8(b)(4)(i) and (ii)(B) of the Act.

#### CONCLUSIONS OF LAW

1. The Respondent, Glaziers, Architectural Metal, and Glassworkers Local Union No. 513, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

2. West County Glass, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Respondent, by threatening Allied Builder Corporation to picket Allied's job because it was involved in a labor dispute with West County Glass and by picketing Allied's job at times when West County Glass was not working on the job, engaged in conduct in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6), (7), and (8) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is hereby ordered that Respondent, Glaziers, Architectural Metal and Glassworkers Local Union No. 513, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening to picket against neutral employers because of a work dispute with any other employer.

(b) Picketing or any similar related conduct, threatening to picket, or by any other means threaten, coerce, or restrain Allied Builders Corporation, or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require Allied Builders Corpora-

<sup>1</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

tion, or any other person to cease doing business with West County Glass Co. or any other person.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in St. Peters, Missouri, copies of the attached notice.<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 21 days after service by the Region, file with the Regional Director, Region 14, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT by picketing or any similar related conduct or in any other manner induce or encourage any individual employed by Allied Builders Corporation, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his or her employment to perform any services where objects thereof are to force or require Allied Builders Corporation, or any other person to cease doing business with West County Glass Co. or any other person.

WE WILL NOT by picketing or any similar related conduct, by threatening to picket or by any other means threaten, coerce, or restrain Allied Builders Corporation, or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require Allied Builders Corporation or any other person, to cease doing business with West County Glass, Co., or any other person.

GLAZIERS, ARCHITECTURAL METAL AND  
GLASSWORKERS LOCAL NO. 513, AFFILIATED  
WITH INTERNATIONAL BROTHERHOOD OF  
PAINTERS AND ALLIED TRADES, AFL-CIO